

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MARK ANDERSON,

Plaintiff(s),

v.

WESLEY S. WHITE, et al.,

Defendant(s).

Case No. 2:13-CV-2097 JCM (VCF)

ORDER

Presently before the court is plaintiff Mark Anderson's motion for relief from the order dismissing the case. (ECF No. 84). Defendants Wesley White and Thomas Gibson filed a response (ECF No. 86), to which plaintiff replied (ECF No. 87).

I. Facts

Plaintiff retained defendant White to represent him in a dissolution of marriage proceeding against his former wife. (ECF No. 1 at 10). Defendant filed the divorce complaint on plaintiff's behalf on March 30, 2012. (ECF No. 1 at 11).

Defendant agreed to participate in a settlement conference before the Honorable Robert Gaston on May 9, 2012. (ECF No. 1 at 11). At the settlement conference, plaintiff and his then-wife signed a memorandum of understanding ("MOU"), which outlined a settlement. (ECF No. 1 at 11). Later, plaintiff alleged that the "Wilson property" was improperly disposed of in the MOU. (ECF No. 1 at 11).

Shortly after the settlement conference, plaintiff terminated his relationship with defendant and retained replacement counsel. (ECF No. 1 at 12). On June 29, 2012, counsel for plaintiff's former wife filed a motion to enforce settlement. (ECF No. 1 at 12). Plaintiff's replacement counsel filed an opposition to motion to enforce settlement and countermotion to set aside and

1 deem the MOU unenforceable, which was unsuccessful. (ECF No. 1 at 12). Thereafter,
 2 replacement counsel appealed the judge's order granting the motion to enforce settlement. (ECF
 3 No. 1 at 34–36). The Nevada Supreme Court affirmed the judgment of the district court. *Anderson*
 4 *v. Sanchez*, 373 P.3d 860 (Nev. 2016).

5 Plaintiff alleged that defendant committed malpractice by advising plaintiff that the
 6 “Wilson property” was likely to be adjudicated was likely to be adjudicated as community
 7 property. (ECF No. 1). As a result, plaintiff initiated this action in state court on September 3,
 8 2013, asserting six causes of action: (1) legal malpractice; (2) breach of contract; (3) breach of
 9 fiduciary duty; (4) breach of implied covenant of good faith and fair dealing; (5) negligent
 10 infliction of emotional distress; and (6) vicarious liability. (ECF No. 1). Defendant removed the
 11 action to this court on November 14, 2013. (ECF No. 1).

12 Subsequently, defendant moved for summary judgment or in the alternative to dismiss
 13 under Federal Rule of Civil Procedure 12(b)(1). (ECF No. 40). The court found that the matter
 14 was not ripe for adjudication and that the court lacked subject matter jurisdiction. (ECF No. 71).
 15 Accordingly, the court granted defendant's motion to dismiss under Rule 12(b)(1) and dismissed
 16 plaintiff's complaint without prejudice. (ECF No. 71). Thereafter, plaintiff filed a notice of appeal
 17 (ECF No. 75), which he later dismissed (ECF Nos. 88, 91).

18 In the instant motion, plaintiff moves for Rule 60(b)(5) relief from the court's order
 19 dismissing plaintiff's complaint without prejudice (ECF No. 71) and requests that the case be
 20 reopened and the award of costs be vacated.

21 **II. Legal Standard**

22 Federal Rule of Civil Procedure 60(b) provides, in relevant part, that the court may relieve
 23 a party from an order for the following reasons: “(5) the judgment has been satisfied, released or
 24 discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it
 25 prospectively is no longer equitable; or (6) any other reason that justifies relief.”

26 **III. Discussion**

27 Citing to Rule 60(b)(5), plaintiff contends that relief is proper because the underlying case
 28 is now ripe. (ECF No. 84 at 3). Specifically, plaintiff argues that “pursuant to . . . Rule 60[b](5)

1 the basis for the decision that the case was not ripe has been reversed by the decision of the Nevada
2 Supreme Court.” (ECF No. 84 at 4). The court disagrees.

3 Plaintiff’s argument misstates the basis for dismissal of his complaint in the court’s order.
4 The court dismissed plaintiff’s complaint because the matter was not ripe for adjudication and the
5 court lacked subject matter jurisdiction. (ECF No. 71). Plaintiff’s complaint was dismissed
6 without prejudice, and plaintiff fails to set forth any argument as to the applicability of Rule
7 60(b)(5) to his case or any facts that would warrant relief under Rule 60(b).

8 Accordingly, the court declines to reopen plaintiff’s case and grant plaintiff relief from
9 judgment. Because plaintiff’s complaint was dismissed without prejudice, the court finds no
10 reason to reopen the instant action. In light of the foregoing, there is also no reason to address
11 plaintiff’s request to vacate the award of costs.

12 **IV. Conclusion**

13 Accordingly,

14 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff’s motion for
15 relief from the order dismissing the case (ECF No. 84) be, and the same hereby is, DENIED.

16 DATED August 24, 2016.

17 
18 UNITED STATES DISTRICT JUDGE